IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 742 OF 2005.
IN
WRIT PETITION NO. 822 OF 2004.

Shri Sadashiv Shankar Bhise. ... Applicant.

V/s.

State of Maharashtra & others. ... Respondents.

A.M.Joshi for the applicant.

A.A.Agarwal for respondent Nos.5 to 8.

CORAM: V.C.DAGA, J.

DATED: 13th December 2005.

P.C.:

. While hearing this civil application, it has come to my notice that one Shri S.D.Dhanavate, Notary, State of Maharashtra, Pune had administered oath to the affiant when the affidavit was not accompanied with the subject civil application. This is evident from the fact that the affidavit is dated 11th July, 2004 whereas civil application itself appears to have been drafted and prepared on 8th September, 2004 i.e. subsequent to the date of affidavit on which the Notary had put his seal evidencing administration of oath to the affiant.

2. In absence of civil application, Shri Dhanavate, Notary could not have administered oath

to the affiant to affirm one or two pages affidavit i.e. a bare affidavit. Such act on the part of the Notary amounts to negligence in discharge of his duty.

3. It is not uncommon that in various taluka and district courts including the places at Mumbai, Nagpur and Aurangabad the oath officers or Registrars of the District and Sessions Courts or Registrars at High Court administer oath to the affiant when the affidavit is not accompanied with petition or application in support of which it is affirmed. The practice of administering oath to the affiant without the affidavit being accompanied with the petition or application (in support of which it is made) gives rise to the various types of manipulations and malpractices including that of insertion and/or removal of pages from the petition or application.

4. At this juncture, it will not be out of place to mention that while presiding over Division Bench at Nagpur on 8th January, 2003 I had come across similar types of affidavits in Writ Petition Nos.2963/2001 and 3016/2001. In those petitions, the oath officer had administered

oath to the petitioners even though the respective affidavits were not accompanied with the respective petitions. Consequently, in those petitions, vide order dated 8th January, 2003, directions were issued to all the District and Sessions Courts falling within the jurisdiction of the Nagpur Bench not to accept one or two pages bare affidavit for administering oath to the affiant unless the affidavit is accompanied by the substantive petition or application. Copies of the said order were also sent to all the District and Sessions Judges falling within the jurisdiction of the Nagpur Bench for necessary action so as to arrest such unhealthy practice.

5. At the same time, directions were also issued to the registry of the Bench at Nagpur not to accept any presentation of any petition or application unless each page of the petition carry seal and signature of the oath officer or Notary. Directions were also given not to accept any defective petition or application having defective affidavit.

6. While sitting at Mumbai, I have also come across number of such cases wherein applications or petitions are accompanied by defective or

improper affidavits. In this view of the matter, the Registrar General is directed to issue administrative instructions to all the concerned oath officers working in this Court and also to all the Districts and Sessions Courts and the Courts working thereunder at taluka places not to administer oath or to accept one or two page bare affidavit unless the same is in the form of affirmation at the foot of petition or application or accompanied with the petition or application in support of which it is affirmed; with further direction to see that each and every page bears seal and signature or initial of the oath officer.

7. It is also necessary to issue directions to the State of Maharashtra and all the District Judges to issue necessary directions to all the Notaries as indicated hereinabove since the Notaries are expected to work and operate under the supervision of the State Government as well as respective District Judges under whose jurisdiction they are practising as Notary Public. The District Judges are also expected to keep supervision on their working as per the provisions of the Notaries Act, 1952. At the same time, all the District Judges are expected to appraise all the Notary Public practising in their jurisdiction

to follow these directions, if necessary, by issuing administrative circular in this behalf.

8. Copies of this order be sent to the Secretary, Law and Judiciary, Government of Maharashtra and also all the District Judges to enable them to issue necessary directions to all the Notary Public practising in their jurisdiction not to administer oath to the affiant if the affidavit is not accompanied with the substantive petition or civil application.

9. So far as the application at hand is concerned, since it does not have proper affidavit, the application is rejected. However, it would be open for the applicant to move proper application supported by proper affidavit.

10. Civil application stands disposed in terms of this order with no order as to costs.

11. Copy of this order be sent to the Registrar General for information and action.

(V.C.DAGA, J.)